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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066

EXCISE APPEAL BRANCH

Appeal No. E/2699/2006 - EX[DB] Date 30/03/2009

Assistant Registrar
C.E.S.T.A.T, New Delhi

To :
C.C.E. INDORE
MANIK BAGH PALACE, POST BOX NO. 10, INDORE
452001 (M.P.)

C.C.E. INDORE Appellant

Vs

M/S PREMIER INDUS LTD Respondent

I am directed to transmit herewith a certified copy of **Final order No.**229/2009-**EX[DB]** dated 26-2-09 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(Excise Appeal Branch)

Copy to :
1. Respondent
   M/S PREMIER INDUS LTD
   45/47-A,INDUSTRIAL AREA
   NO-1,DEWAS
2. Adv. / Consult
   NONE

3 C.D.R
~~4 J.C.D.R.~~
5 Bar association, CESTAT, New Delhi
6 M/s. Deeparchi Publications, M-93, Marg. 46, Saket, New Delhi 110017
7 M/s Centax Publictions (P) Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New - 3
8 Excise & Customs cases, B-37, Sector -1, NOIDA - 201301 Gautam Budh Nagar, (U.P.)
9 Raghuraman's 44-B, Regal Flat,Shipra Suncity, Indirapuram - 201010,Ghaziabad, DT, U.P.
10 Nidheshak publications, I.P.Estate, new Delhi
11 Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh, New Delhi - 110026
12 Commercial Laws of India Pvt Ltd Post Bag No. 1033, No.70(Old No. 88), Thyagaraya Road, T. Nagar,Chennai
13 Taxindiaonline.com Pvt.Ltd, B-XI/8183,Vasant Kunj, New Delhi - 110070
14 Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road,Ahmedabad-15
15 Office Copy
16 Guard file

Assistant Registrar
(Excise Appeal Branch)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST BLOCK NO. 2, R.K. PURAM, NEW DELHI

COURT – III

CENTRAL EXCISE APPEAL NO. 2699 OF 2006

[Arising out of Order-in-Appeal No. IND-I/191/2006 dated 16.05.2006 passed by the Commissioner (Appeals), Customs & Central Excise, Indore]

For approval and signature:

Hon'ble Mr. M. Veeraiyan, Member (Technical)
Hon'ble Mr. P.K. Das, Member (Judicial)

1.	Whether Press Reporters may be allowed to see the order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	No
2.	Whether it would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	
3.	Whether their Lordships wish to see the fair copy of the order?	
4.	Whether order is to be circulated to the Departmental authorities?	Yes

CCE, Indore — Appellant

Vs.

M/s. Premier Industries Ltd. — Respondent

Appearance:

Shri B.S. Suhag, D.R., for the Revenue,
None for the respondent

Coram:

Hon'ble Mr. M. Veeraiyan, Member (Technical);
Hon'ble Mr. P.K. Das, Member (Judicial),

Date of hearing/decision: 26th February, 2009

FINAL ORDER NO. 229 / 09-EX **dated** ________

Per P.K. DAS:

Revenue filed this appeal against Order-in-Appeal No. IND-I/191/2006 dated 16.5.2006 passed by the Commissioner (Appeals), Indore.

2. Heard learned D.R. on behalf of the Revenue. None appeared on behalf of the respondents.

3. After hearing learned D.R. and on perusal of the records, it is seen that the respondents were engaged in the manufacture of "Refined Soya Bean Oil" falling under Heading 1503.00 of Schedule to the Central Excise Tariff Act, 1985. The Hon'ble Supreme Court in the case of Shyam Oil Cake Ltd. vs. Collector of Central Excise, Jaipur, reported in 2004 (174) ELT 148 (SC) held that the process of refining oil does not amount to manufacture. In view of the decision of the Hon'ble Supreme Court, the respondents by letter dated 14.12.2004 informed the department that they would not be paying duty w.e.f. 15.12.2004. Note 4 was inserted in Chapter 15 by way of amendment, effective from 1.3.2005 provides that the goods of heading No. 1503.00

labelling or re-labelling of containers and repacking of bulk packs to retail packs or adoption of any other treatment of rendering the product marketable to the consumer, shall amount to "manufacture". This amendment was given retrospective effect from the date of enactment of Finance Bill, 2005 (i.e. May, 2005). The respondents became liable to pay duty on clearances during the period 15.12.2004 to 31.3.2005 in view of retrospective amendment of Chapter Note amendment. The Original authority confirmed the demand of duty of Rs. 28,18,153/- alongwith interest under of Section 11AB of the Central Excise Act, 1944. The Commissioner (Appeals) held that the respondents are liable to pay interest from the date of enactment of Finance Act, 2005 till the date of actual payment is made. Hence, Revenue filed this appeal.

4. Learned D.R. submits that Clause 87 to Explanation to the amendment of Chapter 15 Finance Act, 2005 as enacted on 13.5.2005 provides that no act or omission on the part of any person shall be punishable as an offence which would not have been so punishable if this section had not come into force. He also submits that payment of interest is not punishable offence and, therefore, the respondent is liable to pay interest as duty is levied retrospectively.

5. We find that the amendment of Chapter 15 came on 13.5.2005 with retrospective effect. Section 11AB(1) of the Central Excise Act, 1944, providing that where any duty of excise has not been levied or paid or has been

short-levied or short-paid or erroneously refunded, the person who is liable to pay duty, shall be liable to pay interest. In the present case, duty was levied with retrospective effect consequent upon amendment by Finance Bill, 2005 as enacted on 13.5.2005. So, there is no short levy or short payment of duty prior to 13.5.2005.

6. In view of the above discussion, we find that the Commissioner (Appeals) has rightly held that the respondent would not be liable to pay interest for the period 15.12.2004 to 31.1.2005 prior to amendment of Chapter Note as on 13.5.2005. Hence, we do not find any infirmity in the impugned order. Accordingly, appeal filed by the Revenue is rejected.

(Dictated & pronounced in the Open Court.)

(M. VEERAIYAN)
MEMBER (TECHNICAL)

(P.K. DAS)
MEMBER (JUDICIAL)

RK